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**IN THE
COURT OF APPEALS OF INDIANA**

CANDY JOANN HILL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 57A03-0606-CR-270

APPEAL FROM THE NOBLE CIRCUIT COURT
The Honorable G. David Laur, Judge
Cause No. 57C01-0508-FC-058

January 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Candy Joann Hill appeals her sentence after being convicted of Operating a Vehicle While Intoxicated Resulting in Death,¹ a class C felony, and two counts of Operating a Vehicle While Intoxicated Resulting in Serious Bodily Injury,² a class D felony. Hill contends that her eight-year sentence is inappropriate in light of the nature of the offense and her character. Finding that Hill's sentence is inappropriate, we remand this cause to the trial court with instructions that it impose a six-year sentence on the class C felony and one year sentences on each of the two class D felonies, with the three sentences to run concurrently for an aggregate term of six years imprisonment.

FACTS

On the night of August 19, 2005, Hill, who was on medication for depression, drank mixed drinks containing vodka before driving a vehicle in Noble County. While driving, Hill struck Heather Scrivens, Ruby Rookstool, and Travis Williams, who had been walking on the side of the road. Williams died from his injuries. Scrivens and Rookstool were seriously injured, with each suffering multiple bone fractures. Williams and Rookstool had been engaged and both were friends with Scrivens.

After the collision, Hill stopped her vehicle, flagged down the first vehicle that approached the scene, and attempted to help the three victims. Hill admitted to the investigating officers that she had been drinking alcohol and that she struck Williams, Scrivens, and Rookstool with her vehicle. A breath test showed that Hill had an alcohol concentration of 0.12 grams per 210 liters of breath.

¹ Ind. Code § 9-30-5-5(a)(1).

² I.C. § 9-30-5-4(a)(1).

The State charged Hill with class C felony operating a vehicle while intoxicated resulting in death, class D felony operating a vehicle while intoxicated resulting in serious bodily injury, class A misdemeanor operating a vehicle while intoxicated in a manner that endangers a person, class C misdemeanor operating a vehicle with an alcohol concentration of at least 0.08 grams of alcohol per 210 liters of breath, and operating a vehicle without proof of financial responsibility, a class A infraction.

On January 12, 2006, pursuant to a plea agreement, Hill pleaded guilty to the three felony counts and the State agreed to dismiss the two misdemeanor counts and the infraction count. The State also agreed that any sentences that the trial court might impose on the three felony counts would run concurrently. The trial court accepted the plea agreement the same day.

On February 9, 2006, the trial court had a sentencing hearing in which it identified Hill's multiple victims as the sole aggravating circumstance and found no mitigating circumstances. The court sentenced Hill to the maximum sentence of eight years on the class C felony conviction and the maximum sentence of three years on each class D felony conviction. Pursuant to the plea agreement, the trial court ordered that all three sentences run concurrently for a total executed sentence of eight years. Hill now brings this belated appeal.

DISCUSSION AND DECISION

Hill argues that her eight-year sentence is inappropriate in light of the nature of the offense and her character.³ Specifically, Hill stresses that (1) she never attempted to

³ Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences and comply with the holdings in Blakely v. Washington, 542 U.S. 296

minimize the impact of her offenses; (2) she immediately attempted to help her three victims; (3) she immediately cooperated with police by admitting that she had been drinking and that she struck the three victims; (4) this was her first criminal offense; (5) she was undergoing treatment for depression at the time of the collision; (6) the mixture of prescription drugs and alcohol may have enhanced the effect of the alcohol; (7) she pled guilty, thereby avoiding the time and cost of a trial and eliminating the need for the surviving victims to testify at trial; (8) she was molested by her stepfather as a child; (9) the father of her oldest two children was unstable and abandoned the children; (10) her husband abused her, was in jail at the time of her sentencing, and did not plan to return to the family; (11) she is the sole caregiver for her four young children; (12) she does not routinely abuse alcohol and does not keep alcohol in her home; and (13) she exhibited intense remorse and regret from the time she committed the offense.

We initially note that our court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). However, sentence review under Appellate Rule 7(B) is very deferential to the trial court's decision, Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003), and we refrain from merely substituting our judgment for that of the trial court, Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). The burden is on the

(2004), and Smylie v. State, 823 N.E.2d 679 (Ind. 2005). See Ind. Code §§ 35-38-1-7.1, 35-50-2-1.3. Here, Hill committed her offense and was sentenced after the effective date; therefore, we will apply the amended statute.

defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Regarding the nature of the offense, Hill drove after drinking alcohol and collided with three people who were walking on the side of the road, seriously injuring two of them and killing the third. One of the victims watched her fiancé die as a result of Hill's actions. Therefore, we cannot say that the nature of the offense aids Hill's argument that her sentence is inappropriate.

On the other hand, Hill argues that an eight-year sentence was not warranted because the trial court's finding that the multiple victims were an aggravating circumstance was improper. In particular, Hill claims that because she was convicted of three separate crimes, the "trial court [could] not use a factor constituting a material element of an offense as an aggravating circumstance." Henderson v. State, 769 N.E.2d 172, 180 (Ind. 2002). According to Hill, proof of each victim's identity in this case was a material element of the count relating to that victim. However, our Supreme Court has rejected a similar argument. In McCann v. State, the defendant was convicted of burglary, attempted rape, and attempted murder. 749 N.E.2d 1116, 1118 (Ind. 2001). The attempt crimes involved two distinct victims. The trial court, in imposing two consecutive fifty year sentences, cited as an aggravating factor the nature and circumstances of the defendant's crimes, including the fact that the "offenses or this series of acts involves multiple victims." Id. at 1120. In affirming the aggravator, our Supreme Court acknowledged the rule that "the trial court may not use 'a factor constituting a material element of an offense as an aggravating circumstance[;]'"

however, “[i]njury to multiple victims has been cited several times by this Court as supporting enhanced and consecutive sentences.” Id. (citing Walton v. State, 650 N.E.2d 1134, 1137 (Ind. 1995)). Therefore, we cannot say that the trial court improperly relied upon the existence of multiple victims as an aggravating circumstance.

Turning to Hill’s character, she contends that the trial court should have considered her guilty plea to be a mitigating circumstance because she extended a substantial benefit to the State. Our courts have held that guilty pleas should generally be given mitigating weight but that not every guilty plea is a significant mitigating circumstance for sentencing purposes. Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004); Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999). A guilty plea must be accorded some mitigating weight when it confers a benefit on the State, little or no benefit on the defendant, and the defendant demonstrates his remorse and acceptance of responsibility. Cotto v. State, 829 N.E.2d 520, 525-26 (Ind. 2005).

Here, Hill did receive a substantial benefit in exchange for pleading guilty. The State originally charged her with one class C felony, two class D felonies, one class A misdemeanor, one class C misdemeanor, and one class A infraction. This collection of charges exposed Hill to a potential maximum sentence of fifteen years and sixty days.⁴

⁴ Hill urges that her potential sentence was limited to ten years by virtue of Indiana Code section 35-50-1-2(c), which states:

except for crimes of violence, the total of the consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(Emphasis added). Hill ignores, however, that class C felony operating a vehicle while intoxicated resulting in death is a “crime of violence” for purposes of Indiana Code section 35-50-1-2(c). See Ind.

See Ind. Code §§ 35-50-2-6, 35-50-2-7, 35-50-3-2, and 35-50-3-4. By virtue of the plea agreement, however, the misdemeanor and infraction charges were dismissed and the State agreed that the sentences on the felony charges must run concurrently, thereby limiting Hill's potential sentence to eight years. The reduction of one's potential sentence by nearly half constitutes a substantial benefit, and the trial court was not required to assign significant mitigating weight to Hill's guilty plea. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (court holding that "a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea"), trans. denied.

However, Hill's actions immediately after the collision elucidate her true character. The record establishes that Hill stayed at the crash scene, immediately summoned help for the victims, and cooperated with the police by admitting that she had been driving the vehicle after drinking alcohol when she collided with the victims. Tr. p. 47; Appellant's App. p. 15. Furthermore, Hill continued to accept responsibility by pleading guilty and accepting an open-sentence plea agreement. As she stated at sentencing, "I am so sorry. And I wish it would have been me." Tr. p. 42-42, 49.

Additionally, Hill, who was thirty years old at the time of sentencing, had no prior criminal history. Id. at 19-20, 56. We have previously held that "leniency is encouraged toward defendants who have not previously been through the criminal justice system." Beck v. State, 790 N.E.2d 520, 522 (Ind. Ct. App. 2003). Hill lived her life in accordance with the law for three decades and, unfortunately, made the poor decision to drive home

Code § 35-50-1-2(a)(14). Therefore, the sentencing limitations found in Indiana Code section 35-50-1-2(c) do not apply here.

that night after drinking alcohol. Even so, Hill's three decades as a law-abiding citizen cannot merely be disregarded.

In light of Hill's character, we find that the eight-year aggregate sentence imposed by the trial court is inappropriate. While an enhanced sentence is warranted because there were multiple victims of the crime, we remand this cause to the trial court with instructions that it impose a six-year sentence on the class C felony and one year sentences on each of the two class D felonies, with the three sentences to run concurrently for an aggregate term of six years imprisonment.

Remanded with instructions to revise the sentence accordingly.

CRONE, J., concurs.

VAIDIK, J., dissents with opinion.

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vs.)	No. 57A03-0606-CR-270
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STATE OF INDIANA,)	
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VAIDK, Judge, dissenting.

I respectfully dissent. Indiana Appellate Rule 7(B) authorizes us to revise a sentence only “*after due consideration of the trial court’s decision[.]*” (Emphasis added). The majority has failed to afford the appropriate level of deference to the trial court, and I believe its decision to revise Hill’s sentence from eight years to six years slices the trial court’s sentencing discretion too thin.

I agree with the majority that Hill is not a person of poor character, especially in light of the fact that she has no criminal history. Nonetheless, Hill’s positive character attributes are substantially outweighed by the horrific nature of her offenses. Travis Williams was killed. Williams’ fiancé, Ruby Rookstool, watched him die then spent four months in physical therapy and had to live in an assisted living home for seven weeks. Heather Scrivens’ pelvis and tailbone were shattered and she was unable to walk for three

months. In light of these devastating consequences, Hill was exposed to a potential prison sentence of over fifteen years. The trial court found a sentence of eight years to be appropriate. After due consideration of that decision, I do not find Hill's sentence to be inappropriate. I would affirm the trial court's decision.